



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Allie Marie Sumner

DEC 18 2017

Jenks, OK 74037

MUR 7127
Sean Braddy for US Senate

Dear Ms. Sumner:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on August 22, 2016, alleging that the Sean Braddy for US Senate committee ("Committee"), Sean Braddy, and Kim Braddy violated the Federal Election Campaign Act of 1971, as amended. Based on that complaint, the response submitted by the Respondents, and publicly available information, the Commission, on November 14, 2017, voted to dismiss the allegations that Sean Braddy and Kim Braddy violated 52 U.S.C. § 30114(b)(1) by converting campaign funds to personal use and that the Braddys and the Committee violated 52 U.S.C. § 30102(b)(3) by commingling campaign funds with personal funds. At the same time, the Commission cautioned Sean Braddy and Kim Braddy to take steps to ensure compliance with the Act's prohibition against converting campaign funds to personal use and cautioned Sean Braddy, Kim Braddy, and the Committee to take steps to ensure that all campaign funds are segregated from, and are not commingled with the personal funds of any individual.

In addition, the Commission dismissed the allegations that the Committee violated: (1) 52 U.S.C. § 30102(h)(1) and 11 C.F.R. § 103.3 by failing to use a proper campaign depository; (2) 52 U.S.C. § 30123 and 11 C.F.R. § 110.4(c)(2) by accepting, and failing to timely refund, excessive cash contributions; and (3) 52 U.S.C. § 30104(a) and (b) by failing to timely file its 2016 October Quarterly report and failing to properly report an in-kind contribution. The Commission cautioned the Committee to take steps to ensure compliance with the Act and Commission regulations regarding the use of a proper campaign depository, the prohibition against accepting excessive cash contributions, the requirement to promptly return excessive amounts to the contributor, and the Act's reporting requirements.

The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed. Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

1-2067444-1

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

 Jin Lee

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Sean Braddy for US Senate MUR: 7127
6 and Kim Braddy in her
7 official capacity as treasurer
8 Sean Braddy
9 Kim Braddy
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11 **I. INTRODUCTION**

12 This matter was generated by a complaint filed with the Federal Election Commission by
13 Allie Marie Sumner alleging violations of the Federal Election Campaign Act of 1971, as
14 amended (the "Act") by Sean Braddy for US Senate and Kim Braddy in her official capacity as
15 treasurer, Sean Braddy, and Kim Braddy.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Background**

18 Sean Braddy was a candidate for the U.S. Senate in Oklahoma in 2016 and Sean Braddy
19 for US Senate (the "Committee") served as his principal campaign committee.¹ Kim Braddy is
20 the Committee's treasurer.² The Committee's disclosure reports indicate that the campaign
21 raised a total of \$12,549.53.³ The single largest contribution to the Committee was an in-kind
22 contribution of \$2,685 for website design and development, and most of the remaining

¹ See Sean Braddy, Statement of Candidacy (July 6, 2016); Sean Braddy for US Senate, Statement of Organization (July 16, 2016). On November 8, 2016, Braddy lost the Oklahoma Senate general election with 2.79% of the vote. See Oklahoma State Election Board, 2016 Election Results, https://www.ok.gov/elections/support/20161108_seb.html.

² See Sean Braddy for US Senate, Statement of Organization (July 16, 2016).

³ See Sean Braddy for US Senate, 2016 Post-General Report.

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⁴ The in-kind contribution was received on June 19, 2016. Sean Braddy for US Senate, 2016 July Quarterly Report. The Committee reported receiving: \$5,421.86 in itemized contributions, which included the in-kind contribution, and \$3,238.82 in unitemized contributions in its 2016 July Quarterly Report; \$1,208.35 in itemized contributions and \$2,346 in unitemized contributions in its 2016 October Quarterly Report; \$45 in unitemized contributions in its 2016 Pre-General Report; and \$50 in unitemized contributions in its 2016 Post-General Report. *See also* Joint Resp. Attach. A, C, D.

⁵ See Sean Braddy for US Senate, Statement of Organization (July 16, 2016).

⁶ The candidate apparently paid the filing fee on April 15, 2016. Joint Resp. at Attach. A. (Handwritten list of contributions received and expenses paid between April 15, 2016 and August 2016.) See *Ballot Access Requirements for Political Candidates in Oklahoma*, Ballotpedia, [https://ballotpedia.org/Ballot access requirements for political candidates in Oklahoma](https://ballotpedia.org/Ballot_access_requirements_for_political_candidates_in_Oklahoma).

7 See Joint Response at Attach. C (Kim Braddy's April 2016, PayPal Account Statement showing activity between April 14, 2016, and April 20, 2016); Attach D. (Sean Braddy for US Senate PayPal Financial Statement (January 1, 2016, to September 6, 2016) showing activity between April 29, 2016, and August 3, 2016). The Respondents did not provide any documents related to the Committee's use of Sean Braddy's personal bank account, which, according to Respondents, was used to move money from Kim Braddy's PayPal account to the Committee's depository account. *Id.* at 1.

8 Compl. at 1.

⁹ *Id.*

1 account, from which both she and the candidate made “multiple withdrawals.”¹⁰ The
2 Complainant also alleges that she was pressured to request cash donations at campaign events,
3 which the Braddys did not report.¹¹

4 The Respondents deny that the Braddys used campaign funds for personal use.¹² This
5 denial is, to some extent, contradicted by the Committee’s disclosure reports. In a Memo Text
6 attached to the Committee’s 2016 Year-End Report, Kim Braddy states that “we intend to use the
7 remaining \$111.56 from the political campaign towards vehicle maintenance.”¹³ Although the
8 record does not indicate the purpose for which those funds were disbursed, the memo text and
9 the relevant Committee reports indicate that the Respondents used this money to maintain a car.
10 As to the allegation relating to alcohol purchases, Sean Braddy states he used his own funds to
11 pay for dinner and drinks for himself and a campaign worker at a Tulsa Volunteer meeting held
12 on June 29, 2016.¹⁴

13 The Respondents acknowledge that the Committee’s first disclosure report was filed late,
14 but assert that all contributions were properly reported.¹⁵ The Respondents also admit that the
15 Committee did not use the depository listed in its Statement of Organization to manage the

¹⁰ *Id.*

¹¹ *Id.*

¹² Joint Resp. at 1.

¹³ See Memo Text, Sean Braddy for US Senate, Termination Report. The report states on the Detailed Summary Page that the Committee had \$111.56 cash on hand at the end of the reporting period. *Id.* at 4. This disclosure report, dated February 10, 2017, should be designated as the 2016 Year-End Report instead of a Termination Report.

¹⁴ Joint Resp. at 2.

¹⁵ *Id.* at 1. The Committee filed its 2016 July Quarterly Report over a month late, on August 17, 2016. According to the Joint Response, the 2016 July Quarterly Report was late filed due to a number of factors, including a delay in retrieving receipts and other campaign documents from the individual originally retained to serve as treasurer. *Id.*

1 Committee's finances.¹⁶ According to the Joint Response, the Committee deposited campaign
2 receipts into Kim Braddy's PayPal account before they were transferred to the candidate's
3 personal bank account, and then transferred again to the Sean Braddy for US Senate PayPal
4 account.¹⁷ The Respondents also admit that the Committee received cash donations, "each less
5 than \$200," but deny that the Complainant was asked to accept only cash donations.¹⁸

6 **B. Legal Analysis**

7 **1. Personal Use**

8 The Act prohibits the conversion of campaign funds to personal use.¹⁹ The
9 Commission's regulations define "personal use" as "use of funds in a campaign account of a
10 present or former candidate to fulfill a commitment, obligation or expense of any person that
11 would exist irrespective of the candidate's campaign or duties as a Federal officeholder."²⁰ *Per*
12 *se* personal use expenses include: a home mortgage, rent, or utility payment; clothing purchase;
13 or a *noncampaign-related automobile expense*.²¹ (emphasis added.)

14 While the Complainant did not provide any information to support her allegation that
15 Sean and Kim Braddy used campaign funds to pay personal expenses, the information suggests

¹⁶ *Id.*

¹⁷ *Id.* See Attach. A, C and D.

¹⁸ *Id.* at 2. According to the Joint Response, the Committee raised funds through the campaign's Facebook page and website. *Id.*

¹⁹ 52 U.S.C. § 30114(b)(1).

²⁰ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

²¹ 52 U.S.C. § 30114(b)(2)(A)-(C).

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1 that, at some point after the November 2016 election, the Braddys used campaign funds to pay
2 for personal vehicle maintenance.²²

3 Accordingly, while it appears that Sean and Kim Brady may have converted campaign
4 funds to personal use, given the *de minimis* amount at issue, the Commission dismisses the
5 allegation that Sean and Kim Braddy violated 52 U.S.C. § 30114(b)(1), but cautions the
6 Respondents regarding the prohibition against converting campaign funds to personal use.²³

7 2. Failure to Use a Proper Campaign Depository and Commingling

8 The Act and Commission regulations require political committees to designate one or
9 more State banks, federally chartered depository institutions, or depository institutions or
10 accounts which are insured by the Federal Deposit Insurance Corporation ("FDIC") or the
11 National Credit Union Administration, as its campaign depository or depositories.²⁴ All
12 campaign receipts must be deposited, and disbursements (except petty cash) must be drawn on
13 such accounts.²⁵ The Act and Commission regulations also require that all campaign funds must
14 be "segregated from and may not be commingled with the personal funds of any individual."²⁶

²² The Committee's disclosure reports suggest that the Braddys used the campaign funds for vehicle maintenance at some point between February 5, 2017, and April 30, 2017. *See* Sean Braddy for US Senate, Termination Report, at 1; Sean Braddy for US Senate, 2017 April Quarterly Report, at 4. The Braddy Committee's 2017 July Quarterly report states that the committee had \$0 cash on hand at the beginning and the end of the reporting period. *See* Sean Braddy for US Senate, July Quarterly Report, at 4.

²³ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). *See* MUR 7057 (Jason Chaffetz, *et al.*) (Commission dismissed allegation that the respondent used the committee vehicle for personal use because of the vagueness of evidence, the impending statute of limitations, and the possibility that personal use of the vehicle was *de minimis*, and issued letter of caution.)

²⁴ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.2.

²⁵ 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.3(a).

²⁶ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

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1 The Committee listed FFCU on its Statement of Organization as its campaign depository,
2 but apparently only used that account to pay the state's filing fee.²⁷ The Respondents effectively
3 admit that the Committee instead deposited the majority of campaign funds raised (\$12,549.53)
4 into; and made campaign expenditures from two PayPal accounts and the candidate's personal
5 bank account.²⁸ The Respondents also admit that campaign funds were improperly commingled
6 with the Braddys' personal funds by stating that campaign contributions were deposited into Kim
7 Braddy's personal PayPal account and also into a personal account held by the candidate.²⁹

8 Due to the Committee's modest amount of activity during the general election cycle, the
9 Commission dismisses the allegation, but cautions the Committee regarding the requirement that
10 political committees utilize proper depositories and regarding the prohibition against
11 commingling campaign funds with personal funds.

12 3. Acceptance of Cash Contributions

13 The Act and Commission regulations also prohibit making cash contributions that
14 aggregate in excess of \$100 and require that political committee receiving cash contributions
15 exceeding this limit promptly return the excessive amount to the contributor.³⁰ A review of the
16 available information indicates that the Committee accepted and failed to timely refund the
17 excessive amount of cash contributed by three individuals; the Committee accepted two cash

²⁷ See Joint Resp., Attach. A at 9.

²⁸ *Id.* at 1.

²⁹ *Id.* It is not possible to state the total amount of campaign funds that were commingled with the candidate's personal funds because the Respondents did not provide any documents related to the Committee's use of Sean Braddy's personal bank account.

³⁰ 52 U.S.C. § 30123; 11 C.F.R. § 110.4(c)(2). Treasurers of political committees are required to examine contributions for evidence of illegality. 11 C.F.R. § 103.3(b).

1 contributions of \$1,000 each and one cash contribution of \$200.50³¹ Accordingly, given the *de*
2 *minimis* amount of activity and in violation, the Commission dismisses this allegation pursuant to
3 *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985), but cautions the Committee regarding the Act's
4 prohibition against receiving cash contributions in excess of \$100 and the requirement that
5 excessive cash contributions must be properly refunded.

6 4. Reporting

7 Political committee must file disclosure reports with the Commission in accordance with
8 52 U.S.C. § 30104(a).³² The Act also requires that political committees accurately report their
9 receipts and disbursements.³³ As acknowledged by the Respondents, the Committee filed its
10 2016 July Quarterly report 32 days late.³⁴ In addition, the Committee failed to properly report a
11 \$732.50 in-kind contribution (proceeds from a garage sale) made on August 2, 2016, on its 2016
12 October Quarterly Report.³⁵ Accordingly, due to the Committee's modest amount of activity
13 during the general election cycle and the *de minimis* amount of the in-kind contribution at issue,
14 the Commission dismisses the reporting allegation, but cautions the Committee regarding the

³¹ See Sean Braddy for US Senate, 2016 July Quarterly Report at Schedule A, 1 (Michael Krauss contributed: \$1,000 in cash on April 15, 2016, \$50 in cash on May 5, 2016, \$50 in cash on June 5, 2016, and made an in-kind contribution of \$421.36 on June 13, 2016; Alfred Duffy contributed \$1,000 in cash on April 15, 2016; Mary Francis contributed \$200.50 in cash on June 18, 2016). *Id.* at 1, Schedule A Memo Item.

³² Political committee are required to file quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year. 52 U.S.C. § 30104(a)(2)(A)(iii).

³³ *Id.* § 30104(a) and (b).

³⁴ See Joint Resp. at 1; Sean Braddy for US Senate, 2016 July Quarterly Report.

³⁵ In-kind contribution must be reported as both a contribution received and an expenditure made. 11 C.F.R. § 104.13(a)(1), (2): See Joint Resp., Attach. A at 4; Sean Braddy for US Senate, 2016 October Quarterly Report.

- 1 Act's requirements for the timely filing of disclosure reports and proper reporting of in-kind
- 2 contributions.³⁶

³⁶ *Heckler*, 470 U.S. at 831-832.